



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>06/25/01</b>	Bill No:	<b>SB 445</b>
Subject:	<b>Kopp Act</b> <b>Taxpayers' Bill of Rights</b>	Author:	<b>Burton</b>
Board Position:	<b>Neutral</b>	Related Bills:	

### BILL SUMMARY

The provisions of this bill relevant to the Board of Equalization would:

1. Require that a contribution to any Board Member aggregating \$250 or more from a committee that has received a contribution aggregating \$250 or more within the preceding 12 months from a corporation that is a party, participant, or agent to any Board hearing be included among contributions subject to Kopp Act provisions. (Government Code Section 15626)
2. Amend the Sales and Use Tax Law and the Franchise and Income Tax Law Taxpayers' Bill of Rights to declare that the purpose of any tax proceeding is the determination of the taxpayer's correct amount of tax liability. (Revenue and Taxation Code Sections 7081 and 21002)

**As amended on June 26, 2001**, the provisions to require that certain writings pertaining to items to be considered at a public meeting as specified, be made available on the Internet, and made available for public inspection at the meeting, prior to any final action being taken on that item, only apply to the Franchise Tax Board and not the Board of Equalization. (Government Code Section 11125.1)

**Sponsor and purpose.** This bill is sponsored by Senator Burton in an effort to more efficiently provide interested parties with information pertaining to public meetings, subject contributions from Political Action Committees (PAC's) to the Kopp Act provisions, and declare that tax proceedings are performed to correctly determine the taxpayer's liability.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*

**ANALYSIS****Kopp Act***Government Code Section 15626***Current Law**

As part of a comprehensive governmental ethics reform measure, Senate Bill 1738 (Chapter 84, Statutes of 1990) enacted the Quentin L. Kopp Conflict of Interest Act of 1990 (Section 15626 of the Government Code). The Act requires that, prior to rendering any decision in any adjudicatory proceeding before the Board, each Member who knows or has reason to know that he or she received a contribution of \$250 or more within the preceding 12 months from a party or participant, or his or her agent, shall disclose that fact on the record of the proceeding, as specified. Further, each Member is prohibited from participating in the decision or using his or her position to influence the decision if a contribution was made, as specified. The Act also provides that a party or a participant is required to disclose for the record if there has been a contribution to a Member of \$250 or more in the preceding 12 months. The Act further requires that Board staff must inquire and report to the Board whether any such contributions have been made. Any person who knowingly or willfully violates any of those provisions is guilty of a misdemeanor. Currently, contributions by Political Action Committees (PACs) are not subject to the contribution limits and disclosure requirements in the Act.

**Proposed Law**

This bill would amend Government Code Section 15626 to provide that contributions by a committee that has received a contribution aggregating \$250 or more within the preceding 12 months *from a corporation* that is a party, participant, or agent to any Board Member would also be subject to the Kopp Act contribution and disclosure provisions. For purposes of this provision, "committee" would have the same meaning as prescribed in Government Code Section 82013 and related regulations.

**COMMENTS**

1. **May 1, 2001 amendments.** These amendments clarify that the proposed contribution disclosure requirements would only apply to contributions to a PAC by a *corporation* that is a party, participant, or agent. The author has attempted to make the provisions of this bill more manageable for Board staff and Board Members by narrowing the contributions subject to disclosure to only those contributions that corporations make to PACs.
2. **An October 29, 2000 newspaper article suggested that some companies' taxes were reduced as a result of Board decisions that may have been influenced by permissible contributions to Members.** These companies were corporate members of the Taxpayers Political Action Committee (Tax PAC), and PAC contributions are currently not subject to the conflict of interest provisions. This bill would close an unintended loophole in the Kopp Act by making contributions from certain PACs, as specified, subject to the Kopp Act disclosure provisions.

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3. **This bill would still create administrative difficulties for Board staff and Board Members.** Board Proceedings staff currently track, identify and timely disclose all contributions of \$250 or more made to Board Members, and determine if any contributors are parties, participants, or agents to any Board Members. By contrast, under current law, information about PAC's is not required to be reported to the Board.
4. **Current PAC requirements.** Current campaign finance disclosure law requires candidates and committees to make public their contributions and expenditures. Political parties, PACs, and major donors who help finance campaigns, plus slate mailer organizations that are paid to promote candidates and issues, are identified on the Secretary of State's web site (<http://www.ss.ca.gov/>). In 1997, the State Legislature enacted a new law requiring that the information be transmitted to the Secretary of State electronically and that it be posted on the Internet. However, only candidates and committees that raised or spent \$100,000 or more in connection with the March 7 Primary were required to file electronically. Some others, with fewer receipts and expenditures, filed voluntarily. The monetary threshold for mandatory electronic filing dropped to \$50,000 on July 1st for campaigns involved in the November 7, 2000 General Election.
5. **While it is not difficult to determine if a party, participant, or agent has contributed to a Board Member, it could be extremely difficult to determine if that party has contributed to a PAC that subsequently has contributed to a Board Member.** This would require extensive review of PAC contribution reports. However, the timeline for PACs to submit contribution disclosure statements often results in a lag between the Board hearing date and the submission of disclosure statements. For example, statements are generally filed at the end of each month following the end of each quarter. This year, the Board met twice in January, once in February and twice in March. Therefore, a contribution could have been made on January 1, yet the disclosure statement not be available until April 30.

In addition, even when the disclosure statement is available, Board staff would still be required to review the often extensive reports to determine if any PAC contributions involved a corporation that is a party to a hearing before the Board. To address this situation, in addition to the already existing disclosure requirements, the author should consider amending the bill to require PACs and corporations to report whether any contributions have been made to Board Members, including a list of contributing corporations, as soon as the contribution is made. However, if the bill is amended as suggested, it would still require additional Board staffing and extremely burdensome record-keeping and tracking responsibilities.
6. **Related legislation.** Previous Legislative attempts to revise the Kopp Act provisions have been unsuccessful, although those measures were broader than this bill's provisions. Those bills were: Senate Bill 139 (Kopp, 1993), Senate Bill 1806 (Kopp, 1992), Senate Bill 80 (Kopp, 1991), and Senate Bill 438 (Kopp, 1989). Those bills were vetoed by Governors Wilson (SB 139, SB 1806, and SB 80) and Deukmejian (SB 438).

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**ANALYSIS****Taxpayers' Bill of Rights***Revenue and Taxation Code Sections 7081 and 21002***Current Law**

The Sales and Use Tax Law, and the Franchise and Income Tax Law contain Taxpayers' Bill of Rights provisions to ensure that the Franchise Tax Board (FTB) and Board of Equalization (BOE) conduct assessment and collection operations that protect California taxpayers' privacy and property rights. Each respective Bill of Rights contain specific findings and declarations of intent regarding the expectations and responsibilities of taxpayers and both Boards. Taxpayers' Bill of Rights provisions have also been enacted for many other BOE tax and fee programs.

**Proposed Law**

This bill would amend Revenue and Taxation Code Sections 7081 and 21002 to add Legislative findings that the purpose of any proceeding between the BOE or the FTB and a taxpayer is the determination of the taxpayer's correct amount of tax liability. This bill would also state the Legislature's intent that both the BOE and the FTB and the taxpayer be accorded every opportunity to present and consider all relevant information pertaining to the taxpayer's liability.

**COMMENTS**

1. **Historically, legislators, taxpayers, tax practitioners, tax attorneys, and FTB members have expressed concern with the length of time it takes the agency to resolve protests and appeals.** A Federal Taxpayer Bill of Rights required that FTB, in cooperation with BOE, the State Bar Association, certified public accountants, and other interested parties, develop a plan to reduce the time to resolve protests and appeals. The plan was implemented by FTB in 1989, and informational packages were developed to inform taxpayers of the new procedures. However, the Office of Administrative Law determined that those packages were invalid regulations.
2. **The FTB recently proposed protest regulations to specify the procedures necessary for staff to make a "determination of the correct amount of tax."** The protest regulations would have shortened the time for FTB action on a protest from 33 months, which is the average time now taken, to 24 months. They also would have prohibited a re-audit of a taxpayer as part of the protest process unless the taxpayer had opened up new issues or failed to provide information during the audit.
3. **The BOE recently acted to expedite business tax appeals.** Board staff are required to issue a decision and recommendation within 90 days after the submission of additional documents to the conference holder. BOE staff does not anticipate that the provisions in this bill would have a material impact on its procedures.

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**COST ESTIMATE**

This bill would result in significant costs related to the requirements that Board staff inquire about, and report on, contributions made by PACs. These costs are estimated to be \$84,000 in 2001/02 and \$130,000 beginning in 2002/03 and annually thereafter.

**REVENUE ESTIMATE**

This bill would not impact the state's revenues.

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